



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: JUNE 08, 2022

IN THE MATTER OF:

Appeal Board No. 621767

PRESENT: RANDALL T. DOUGLAS, MEMBER

The Department of Labor issued the initial determination ruling the claimant not entitled to receive benefits, effective October 11, 2021, on the basis that the claimant was unable to file a valid original claim pursuant to Labor Law § 527 because the claimant had insufficient earnings in covered base

period employment. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances by the claimant and on behalf of the employer and the Commissioner of Labor. By decision filed February 22, 2022 (), the Administrative Law Judge sustained the initial determination.

The claimant appealed the Judge's decision to the Appeal Board.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant has worked for this employer as a concrete laborer for approximately 12 years as a seasonal employee during the months it is possible to work with concrete in New York state. When the claimant was laid off during the winter months, he applied for and normally received unemployment insurance benefits.

The claimant filed a claim for benefits on October 17, 2022, made effective October 11, 2021. On October 18, 2021, the Department of Labor ("DOL") mailed

the claimant a monetary benefit determination which indicated that he only had earnings of \$7043.75 in the 2nd quarter of 2021 and stated he was denied benefits because he did not work and earn wages in at least two calendar quarters of his base period and the total wages for his base period was less than 1 1/2 times the total wages for the highest quarter of earnings in his base period. The claimant only received the first page of the monetary benefit determination, shortly after the mailing date, and did not receive further pages or enclosures. That single page he received stated: if the earnings information contained on the sheet was not correct, to please complete and send the enclosed "Request for Reconsideration" form and informed him that he could also get the form from the website or the back of the Claimant Handbook. The notice of Monetary Determination also told him that if he had any questions about this notice to call (888) 209-8124. This single page does not include any information as to any time limits in which to submit a request for reconsideration of monetary benefits or in which to request a hearing. The claimant called the 888 number on the monetary determination repeatedly without getting through. He also sent a secure message on November 3, 2021 to the DOL in which stated "You need to recalculate my benefit rate. Please bc my boss's quarterly wasn't in. When you determined my rate. I received paperwork saying I didn't make enough when I most certainly did thank you. Thank you." The DOL's response told him to file the correct form that applies to his request and gave him links to the forms "or call us at 888-209-8124" and did not inform him of any time limits in which to make the request by form. The claimant chose to call the number provided because he is not comfortable with computers, but he was unable to get through on that line. He then called his congresswoman's office to ask for help in reaching the DOL and shortly after the congresswoman's office contacted the DOL, the DOL called the claimant and told him where to find the forms to request reconsideration of his benefit rate, and the claimant then followed their instructions, requesting a reconsideration of his benefit rate and filing a request for a hearing on the same date, December 1, 2021.

The claimant also worked and earned \$13,018 in the third quarter of 2021, from July 1, 2021 through September 30, 2021, as reported by his employer in his Quarterly Combined Withholding, Wage reporting, and Unemployment Insurance Return; filed on December 13, 2021.

OPINION: The credible evidence fails to establish that the determination which the claimant received contained any notice of time limitation of thirty days in which to request a reconsideration of his benefit rate or of the of the

statutory time limitation of thirty days in which to request a hearing. The claimant credibly testified that he received of a single page of the monetary determination denying him benefits because he did not work and earn wages in at least two calendar quarters of his base period and the total wages for his base period was less than 1 1/2 times the total wages for the highest quarter of earnings in his base period. No evidence was presented establishing proof of mailing of any more than that single first page of the determination. The credible evidence also establishes that the claimant sent a secure message to the DOL on November 3, 2021 in which he requested a recalculation of his benefit rate because "his boss' quarterly wasn't in yet" when they determined his rate. The letter also clearly disputed the underlying contentions cited in the determination for the denial of benefits, saying "I received paperwork saying I didn't make enough when I most certainly did thank you." As this secure message was sent to the Department of Labor well within the thirty-day time period set forth within the initial determination, we conclude the claimant's request for a reconsideration of his benefit rate and his hearing request were timely made (see Appeal Board 551343); the claimant is entitled to a decision on the merits.

Pursuant to Labor Law § 527 (1) (d), in order to file a "valid original claim"

a claimant must have been paid remuneration by employers, other than employers from whom the claimant lost employment through misconduct in connection therewith, for employment during at least two calendar quarters of the base period, with remuneration of one and one-half times the high calendar quarter earnings within the base period and with at least \$2700 of such remuneration being paid during the high calendar quarter of such base period. The earnings in the high calendar quarter of the base period used in determining a valid original claim shall not exceed an amount equal to twenty-two times the maximum benefit rate, currently \$504, which is \$11,088.

The credible evidence establishes that the claimant had employment in at least two quarters of her

base period and earned \$7043.75 in the 2nd quarter of 2021 and \$13,018 in the third quarter of 2021 from the same employer. The highest quarter wages earned by claimant were \$13,018. By statute the highest quarter is capped at 22 times the maximum benefit rate (\$504) which is \$11,088. The total earnings to be qualified during the base period or alternative base period must equal one and one-half times the capped amount of \$11,088, or \$16,632. Adding the \$7043.75

in wages the claimant was paid in the third quarter of 2021, to the capped high quarter wages (\$11,088), gives the claimant total remuneration in his base period of \$18,131.75 which is more than \$16,632. Consequently, the claimant meets the requirements of Labor Law § 527 that he have received

remuneration in two quarters of his base period, with total remuneration equaling at least one and one-half times his high quarter wages. Accordingly, the claimant has established a valid original claim, and the matter should be referred back to the Department of Labor to calculate the claimant's weekly benefit rate.

DECISION: The decision of the Administrative Law Judge is reversed.

The initial determination, determination ruling the claimant not entitled to receive benefits, effective October 11, 2021, on the basis that the claimant was unable to file a valid original claim pursuant to Labor Law § 527 because

the claimant had insufficient earnings in covered base period employment, is overruled.

The claimant is allowed benefits with respect to the issues decided herein.

The matter is referred back to the Department of Labor to calculate the claimant's weekly benefit rate.

RANDALL T. DOUGLAS, MEMBER